CA2ONCH 92C04
Ontario. Consolidated Hearings Act, 1981.
CH-91-04
PERCIVAL/IMRIE. DECISION AND REASONS FOR DECISION IN THE MATTER OF TWO RELATED APPEALS CONCERNING SEVERANCE AND CONSTRUCTION ALONG THE NIAGARA ESCARPMENT. 1992.

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The Joint Board
THE CONSOLIDATED HEARINGS ACT, 1981

CH-91-04

PERCIVAL/IMRIE
DECISION AND REASONS FOR DECISION

IN THE MATTER OF two related appeals concerning severance and construction along the Niagara Escarpment. The first appeal is by the Niagara Escarpment Commission from a decision of the Regional Municipality of Peel, Land Division Committee, in which the Committee granted, upon conditions, an application by **Marion Percival** to sever a parcel of land for residential use and to retain the remaining land of Northeast Part Lot 7, Concession 4, E.H.S., Town of Caledon, for residential use. The second appeal is by **John David Imrie** from a decision of the Niagara Escarpment Commission, whereby the Commission refused an application to construct a single family dwelling, including an attached garage, septic system, and driveway on the severed lot.

BEFORE: M.E. Johnson - Chair
A.W. Roy - Member

DATED at TORONTO this 14th day of FEBRUARY,

I. E. S.
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IN THE MATTER OF Sections 2 and 3 of the *Consolidated Hearings Act, 1981*, S.O. 1981, as amended;

- and -

IN THE MATTER OF Section 52(7) of the *Planning Act*, S.O. 1983, as amended;

- and -

IN THE MATTER OF Section 25 of the *Niagara Escarpment Planning and Development Act,* R.S.O. 1980;

- and -

IN THE MATTER OF an appeal by the Niagara Escarpment Commission from a decision of the Regional Municipality of Peel, Land Division Committee, whereby the Committee granted, upon conditions, an application by Mrs. Marion Percival to sever a parcel of land;

- and -

IN THE MATTER OF an appeal by Dr. J.D. Imrie from a decision of the Niagara Escarpment Commission whereby the Commission refused an application to construct a single family dwelling.

BEFORE:	M.E. Johnson	-	Chair
	A.W. Roy	-	Member

COUNSEL:

Alison M. Hall	-	for the Niagara Escarpment Commission
Marilyn A. Bergman	-	for Dr. John David Imrie & Marion Percival
David Ostler	-	for Town of Caledon & the Region of Peel

WITNESSES:

Dr. John David Imrie	-	Proponent
David Barber	-	Planner, for the Proponent
Gary Murphy	-	Planner, Niagara Escarpment Commission

REASONS FOR DECISION

This is a decision on two related appeals. The Niagara Escarpment Commission has appealed a decision of the Land Division Committee of the Regional Municipality of Peel which granted consent to Mrs. Percival to sever a 6.1 hectare (15 acre) parcel of land from a parcel containing 20.2 hectares (35 acres). Dr. Imrie has appealed a decision of the Niagara Escarpment Commission which refused the issue of a development permit to construct a single family dwelling on the parcel to be severed and relocate a caretaker's cottage from the land to be severed to the retained land.

All parties were represented by counsel. The Joint Board heard evidence concerning both appeals from Dr. Imrie, a planner employed by the Commission, and a consulting planner retained on behalf of Mrs. Percival and Dr. Imrie. Evidence of these witnesses, together with argument by counsel, has provided the Board with background as to the facts of the appeals and the issues to be resolved, as well as an understanding of the relevant legislation and policies contained in the *Niagara Escarpment Planning and Development Act*, Niagara Escarpment Plan and the Town of Caledon Official Plan. Both counsel also filed and commented on a number of cases where the same or similar issues were considered by other panels of the Board.

The circumstances underlying the original applications for consent to sever and a development permit are unusual. A brief synopsis of Dr. Imrie's evidence follows. Essentially, the Rowan and Imrie families, which are closely related, have a strong and long standing involvement with what was initially a 100 acre parcel of land located in the northern part of the Town of Caledon. This area is very scenic but not suitable for agricultural purposes.

Around 1949, Mr. and Mrs. Rowan purchased the property as a weekend and vacation retreat. They and their children worked to protect and improve certain important natural features of the land. In 1973, following the death of Mr. Rowan, 50 acres passed to the eldest son with the remaining 50 acres staying in the hands of Mrs. Rowan. The son then transferred approximately half of his holding to one of his brothers. Both sons built permanent homes on the respective parcels for their families where they reside today. Mrs. Rowan retained the 50 acres which contains a large house, a caretaker's house, and various outbuildings; members of the family continued to use it in a similar manner as in the past. In addition to the two sons, there are three other children, including a daughter, Susan, who is the wife of Dr. Imrie and two younger sons now in their thirties. Mrs. Rowan subsequently remarried and is the applicant for consent to sever.

Dr. Imrie became involved with the Rowan family through his marriage in the 1970's and the young Imrie family also became involved in the use, enjoyment and improvement of the property. Over the years, at least two woodlot agreements were made with the provincial government; birds and animals were protected and encouraged to stay. Nature and cross country ski trails were developed. All members of the family, including children of the Imrie and Rowan siblings, took an active part in this improvement work which had been commenced by Mr. Rowan Sr. when the property was originally purchased many years earlier.

In about 1978, the cost of keeping up the 50 acre parcel became very onerous for Mrs. Percival (formerly Mrs. Rowan) and in order to avoid the necessity of selling the land, all the children began to make substantial financial contributions to its upkeep. Dr. Imrie cited major capital expenditures carried out by his wife and himself to an amount approaching $150,000. It was understood by all concerned that land for a house would be made available to the Imries, should they desire to build a home there. Windbreak and privacy plantings in a location on the parcel proposed to be severed were done in anticipation of the day this would occur. The Imries presently reside in Toronto and share the large house with Mrs. Percival when they come to the property,

The Imrie family now wish to build a permanent home on the property. The application for consent to sever the 6.1 hectare parcel of land is to permit this development to occur and the application by Dr. Imrie for a development permit is for the same purpose. Using sketches, Dr. Imrie explained the intended location of the house and the present and intended location of a caretaker's cottage which would be moved from the parcel to be severed to the parcel to be retained.

Dr. Imrie described the continuing efforts over the years by the Rowan and Imrie families as "a stewardship" of the land in keeping with the objectives of the Niagara Escarpment Plan and expressed a strong concern that the property remain in the family's hands for its enjoyment in the future. He stated that there were no plans by the family for further severances. It is expected that Mrs. Percival's two younger sons will in the future be able to share what would be the retained parcel and the large house located on it.

The 50 acre parcel with a frontage of about 300 metres (1,000 feet) on the Fourth Line East, is located generally to the northwest of Caledon East and contained in both the Niagara Escarpment Commission Planning Envelope and the Escarpment Development Area. The Little Credit River which was described as a fairly small stream, runs through the property. Lands

covered by the river and its banks are designated Escarpment Natural Area in the Niagara Escarpment Plan. The remaining and larger part of the property is designated Escarpment Rural. As provided in section 2.4.9 of the Plan, where lots are proposed to be created on land bearing more than one designation, the severance policy of the least restrictive designation, in this case, Escarpment Rural, is applicable. The Town of Caledon Plan designates the greater part of the subject land as Rural, with the land area involved with the river designated as Hazard Land.

Witnesses and exhibits filed describe the immediate area as being composed of non-farm residential uses on properties not suited for agriculture. The Devil's Pulpit golf course is to the north. Mr. Barber, the planning consultant who gave evidence on behalf of Mrs. Percival and Dr. Imrie, noted that over the years there has been a great demand for residential properties in the area which is well served with good road linkages to nearby towns and Toronto.

There are no farms on this part of the Fourth Line East. Holdings were described by Dr. Imrie as being of varying sizes, with most in the range of 20 or 25 acres in area. He described the character and land use pattern of the neighbourhood as being similar to that of the Rowan and Percival properties, either weekend or permanent residences.

Certain facts were not at issue. Commenting agencies either had no concerns or requested the imposition of conditions, should consent to sever be granted and development permitted. Counsel for the Region of Peel and the Town of Caledon attended at the hearing to file and speak to a number of conditions which those municipalities wished imposed in the event consent to sever was granted.

The evidence of the two planners and argument by counsel focused on whether or not the requested consent to sever can satisfactorily address four matters, pursuant to section 50(4) of the *Planning Act*, which the granting authority, in this case the Joint Board, is to take account of in considering such relief.

The first of these matters is whether the consent to sever is in the public interest as represented by the Niagara Escarpment Plan (section 50(4)(b) of the *Planning Act*); the second matter is, whether it generally conforms to the Town of Caledon Official Plan (section 50(4)(c) of the *Planning Act*); third, a further consideration and related issue regarding one policy in the Caledon Plan as to lot frontage and depth is also reflected in section 50(4)(f) of the *Planning*

Act; and fourth concerns the matter of the suitability of dimensions and shape of lots to be created.

It was the opinion evidence of Mr. Barber that the requested severance satisfied all relevant policies in the Niagara Escarpment Plan and the lotting arrangement which the severance would create was appropriate. However, Mr. Murphy, the planning witness called by counsel for the Niagara Escarpment Commission, disagreed.

The Board also heard from both these witnesses as to the severance policies of the Region of Peel, adopted by Council in 1974, but not incorporated in a regional official plan. A draft official plan for the Region of Peel is under review but has not been adopted by the Regional Council.

Resolution of the second issue, whether or not a development permit should be issued, depends on whether or not a new lot will be allowed, since section 2.2.7 of the Niagara Escarpment Plan provides that single family dwellings are limited to one per lot (unless a residential use accessory to agriculture is involved) in the area subject to the Plan. Single family dwellings are permitted in the Escarpment Rural Area.

The Board will first address whether the severance request is in the public interest as referred to in section 50(4)(b) of the *Planning Act* and then turn to the matter of conformity with the Town of Caledon Official Plan together with the appropriateness of the dimensions and shape of the severed lot.

Both Mr. Barber and Mr. Murphy discussed the content and objectives of the *Niagara Escarpment Planning and Development Act* and the policies contained in the Niagara Escarpment Plan, with Mr. Murphy describing the Escarpment Plan as a "provincial environmental land use plan" which controls and protects the Escarpment environment. From their evidence, the Board understands that the Escarpment Rural Area provides a buffer to more ecologically sensitive Escarpment Areas. Objectives of the Plan for the Rural Area set out in section 1.5 and applicable in this instance are: maintenance of the scenic value and open landscape nature of lands in the vicinity of the Escarpment, encouragement of agriculture and forestry and the provision of low density rural land uses. Mr. Murphy saw these objectives as relating specifically to the New Lots Policies for the Rural Areas in terms of low density development and numbers of severances to be permitted.

Mr. Barber noted the purpose of the *Niagara Escarpment Planning and Development Act*, set out in section 2, as providing for the maintenance of the escarpment as a continuous natural environment with only development that is compatible occurring. He pointed out the history of the Rowan/Imrie ownership as being in the spirit of the Act.

New lots may be created in the Escarpment Rural Area subject, however, to satisfying provisions in section 1.5 and as well applicable policies in Part 2, Development Criteria of the Plan and official plans.

The two planners provided differing opinion evidence as to the applicability of one of the New Lots Policies. New Lot Policy 3 states:

> Where no lots have ever been severed in the past, and where lots to be created are not in conflict with the Foodland Guidelines, two new lots may be severed for permitted uses per original township lot (generally 40 hectares) or half-lot where the original township lot is 80 hectares (200 acres). The creation or acquisition of a lot by a public body (e.g. for a road deviation) will not be considered as a previous severance provided that this does not result in a remnant severance.

Mr. Barber considers that since two severances have already taken place, New Lot Policy 3 of the Niagara Escarpment Plan, is not applicable at all to this application. This would mean that the Escarpment Plan is silent as to the number of lots which may now be severed from an original lot if lots have been severed in the past. The Town of Caledon Official Plan permits a maximum of three severances in agricultural areas; this severance would be the third and accordingly be permitted by the local Official Plan. The severance policies of the Region of Peel would also allow up to three severances per 100 acre lot in Caledon.

Mr. Barber also pointed out in this regard that another New Lot Policy, Number 5, provides new lots in the Escarpment Rural Area may be created by "low density rural plans of subdivision, condominium or other compatible forms of ownership". Therefore, the Plan contemplates that lands designated Escarpment Rural could be developed more intensively than New Lot Policy Number 3 indicates. It was his opinion that a plan of subdivision was not necessary in this circumstance and lot creation could proceed by way of consent.

Part 2 of the Escarpment Plan, Development Criteria, also contains provisions as to lot creation which were reviewed by these witnesses. The objective of these policies is permitting reasonable enjoyment by owners of lots that can sustain development.

Mr. Barber reviewed the tests for permitted uses contained in section 2.2 of the Plan. There are provisions to the effect that the long term capacity of the site should support the use without a substantial negative impact and the culminative impact of development will not have substantial detrimental effects on the Escarpment area. It was his opinion that the proposed new lot and development would satisfy these policies. It was his opinion that the caretaker's residence, as relocated, would also satisfy the provisions of the Plan.

Formation of new lots is directed to locations that are the least environmentally sensitive. Criteria for creation of new lots include: lot creation, including the size and configuration of new lots is subject to requirements of official plans and by-laws, as well as the objectives of the designation; new lots for residential purposes should be created primarily in designated urban areas, minor urban centres and Escarpment Recreation Centres; and ribbon or strip development should be prevented. Mr. Barber was of the opinion that the proposal meets these criteria.

It was Mr. Barber's further opinion that the proposal satisfied all relevant matters set out in section 50(4) of the *Planning Act* and the proposal generally conformed to the Caledon Official Plan in the context of section 50(4)(c) of the Act. Lot areas proposed would satisfy the requirements of the Caledon Plan which requires a minimum lot area of 6 hectares (15 acres) for lots created by severance in the Rural Area. He thought the land pattern proposed was typical of land division in Caledon and was not strip development. However, it would, in his opinion be impossible, because of the length of the existing lot, for the proposed severed lot to meet the requirement of the Caledon Plan that minimum frontage be equal to approximately one half of the depth of the lot. A similar policy regarding lot proportions is contained in the 1974 Region of Peel Land Severance Policies.

Mr. Murphy considers the words of New Lot Policy Number 3 to be clear in their meaning and operating to bar this application for consent to sever. His interpretation of New Lot Policy Number 3 is that each 100 acre lot is permitted two severed lots and no more. Here, two severances from the original 100 acre parcel have already occurred; no further severances are permitted.

In his opinion, to recognize any other interpretation would be contrary to the environmental protection basis of the Plan. The New Lots Policy is in the Plan to keep density low in the Escarpment Rural Area. Accordingly, to put any other interpretation on Policy Number 3 as to the number of lots which can be created would be contrary to the objectives of the Plan. He saw Policy Number 5 as addressing the provision of low density estate residential lots in the

Escarpment Rural Area on a planned basis by way of approved plans of subdivision, rather than having residential development go forward on an ad hoc basis. Thus, there would be some place on the escarpment for larger estate lot development. This would permit controlled lot creation by plan of subdivision, rather than ad hoc piecemeal severance. New Lot Policy 5 is not applicable in this circumstance.

Moreover, section 14 of the *Niagara Escarpment Planning and Development Act* is to the effect that when a conflict between a provision of the Niagara Escarpment Plan and that of a local plan exists, the policies of the Escarpment Plan in that respect prevail. Thus, the policy of the Caledon Official Plan permitting three severances from an original lot is not relevant to the discussion. However, other policies of the Caledon Plan are applicable and the policy requiring that frontage of a lot be one-half its depth cannot be met by this proposal. Hence, the proposal is not in conformity with the Caledon Official Plan.

Mr. Murphy also addressed section 2.4 of the Niagara Escarpment Plan, noting that section 2.4.2 provides that new residential lots should be created in the designated Urban Areas, Minor Urban Centres and Escarpment Recreation Areas rather than in the Escarpment Rural Area. Again, this provision is to encourage cluster rather than ad hoc development.

He also commented on section 2.4.4 which states that ribbon or strip development should be prevented. Mr. Murphy felt lands abutting Fourth Line itself, rather than the overall Caledon area, should be the subject of consideration in applying this provision; in that framework, with the two small lots to the north and the properties across the road being similar areas, he saw the proposal as encouraging strip development. For that reason, it should be refused.

Mr. Murphy stressed in his evidence to the Board that it is important that the New Lot Policies of the Plan be upheld. To do otherwise would, in his opinion as a staff planner for the Commission, erode the intent of the Plan which is to preserve the Escarpment as far as possible as a natural environment. He did not think that the proposal could be considered to represent good planning.

As noted at the outset, the determinations of the panel are initially as to the ability of the requested consent to sever to satisfy the provisions of the *Planning Act*. The Board does not think that in this circumstance, where the creation of only one lot is anticipated, review of the proposal through the plan of subdivision process would serve good planning or the needs of the

applicant. Accordingly, the panel turns to the matters to which it should have regard pursuant to section 50(4) of the Act. The determinations of the panel are as follows:

1. As to section 50(4)(b) and issues relating to the Niagara Escarpment Plan

The Board has carefully reviewed relevant provisions of the *Niagara Escarpment Planning and Development Act* and policies of the Escarpment Plan. The purpose of the Act is maintenance of the Escarpment and surrounding lands substantially as a continuous natural environment. Only development compatible with the natural environment is to occur. Section 8 of the Act sets out the objectives of the Commission in preparing a Plan. That Plan has now been prepared and adopted by the Lieutenant Governor in Council.

Objectives for the Escarpment Rural Area, which is to provide a buffer to more sensitive areas of the Escarpment, focus on maintenance of scenic values of lands in the vicinity of the Escarpment and open landscape character of the Escarpment Rural Area. Low-density rural land uses are encouraged. With respect to the New Lot Policies, the Plan provides for creation of lots by (i) severance in certain specific circumstances or (ii) low density rural plans of subdivision, condominium or other forms of compatible ownership.

The circumstances where severance may be used for lot creation are very limited; correcting conveyances, enlarging existing lots, acquisitions by a public body, agricultural purposes as long as both lots remain useful for agriculture, recreation of original lots and creation of retirement lots. Two new lots may be severed for permitted uses from an original township lot or half-lot pursuant to New Lot Policy Number 3 as quoted above. The interpretation of this provision is one of the issues of the appeal.

The panel has carefully considered the opinion evidence of both planners and the argument of counsel as to the interpretation to be accorded New Lot Policy Number 3. Counsel for Dr. Imrie and Mrs. Percival cited three decisions of other panels of the Joint Board or of the Ontario Municipal Board where the interpretation of New Lot Policy Number 3 as it appears in section 1.5 or in a companion provision of the Plan dealing with the Escarpment Protection Area was at issue. The thrust of all three of these decisions was that the language of New Lot Policy Number 3 is such as to exclude its applicability in this instance.

The Joint Board in the case of *Earl Dodds* (CH-89-03), February 2, 1990, granted consent to sever a parcel of land in the Escarpment Protection Area and a development permit. The panel

determined that New Lots Policy Number 3(1.4.3) was not applicable because lots had been severed in the past. That decision was rescinded upon the application of the Commission to the Cabinet and the applications of Mr. Dodds refused. Mr. Dodds has now requested judicial review of the Cabinet's decision and as yet no date has been set for the review.

The second decision was that of the Ontario Municipal Board in an appeal by the Niagara Escarpment Commission from a decision of the Committee of Adjustment of the Township of Mono (C890417) which granted an application for consent to sever land in the Escarpment Protection Area. Interpretation of New Lots Policy Number 3 as set out in section 1.4 was again raised. The Board stated "A clear and literal reading of this section, whether such interpretation was intended or not by the drafters, precludes its applicability to the subject lands". A motion by the Commission for leave to appeal the decision to the Court was refused by Mr. Justice McKeown.

Comment on the interpretation of New Lots Policy Number 3 was also provided by way of obiter in the decision of the Joint Board in appeals under *Rudy Vandenberg* (CH-88-08). These appeals involved both consent to sever and the issuance of a development permit for land in the Escarpment Rural Area in the Town of Halton Hills. The panel made its decision on grounds other than New Lots Policy Number 3, but noted that it was "rather unfortunately worded. The Board can see how there is a possible interpretation supporting the one put forward by the Commission, but the Board finds it extremely strained".

This panel, after considering New Lots Policy Number 3 has reached a different determination than did its colleagues in the three cited cases. This outcome is in substantial respect due to the view of this panel that the Niagara Escarpment Plan is a plan, rather than a statute or a regulation. As such, although it is not an official plan of a local municipality as defined by section 1(d) and (h) of the *Planning Act*, it should be accorded the same approach to official plan interpretation as that applied by Vice-Chairman Arrell many years ago in the now famous case of *Belle Himmill Investments vs City of Mississauga*, 13 O.M.B.R. 17. This case was cited to the panel in connection with the decision of the Joint Board in the case of *Anton Skok* (CH-88-07). Mr. Arrell stated in that decision, and his comments have been relied upon by many subsequent panels of the Board, that:

> Official Plans are not statutes and should not be construed as such. In growing communities such as Mississauga, Official Plans set out the present policy of the community concerning its future physical, social and economic development. In

> such a document there will almost inevitably be inconsistencies and uncertainties when considered in light of a specific proposal. It is the function of the Board in the course of considering whether to approve a by-law to make sure that it conforms with the Official Plan. In doing so, the Board should give to the Official Plan a broad liberal interpretation with a view to furthering its policy objectives.

The Board after deliberation finds it cannot accept the interpretation advanced by Mr. Barber and further argued by counsel for the appellants Imrie and Percival that New Lot Policy Number 3 does not apply to this situation.

The Niagara Escarpment Plan is a "plan, policy and program,..." as defined by section 1(f) of the *Niagara Escarpment Planning and Development Act*. It is not itself a statute or even a regulation requiring rigid interpretation. Accordingly, it should be accorded interpretation as a policy document. In that respect it is appropriate to enquire of the staff planner as to the intent of the Plan and apply that intent to the present fact situation, as necessary within the bounds of common sense and reasonable interpretation of language.

The evidence of Mr. Murphy as to the intent of the Plan and its application was clearly stated. The Plan covers several regions and local municipalities and there are local official plans extant with less strenuous provisions as to number of severances permitted per township lot than set out by Policy Number 3. There are also comparatively few original township lots where severances have not occurred. Mr. Murphy saw the potential for an increase in severance activity were this provision of the Plan deemed not to be applicable. His concern is that the objectives of the Plan not be eroded through the creation of additional lots by way of severance.

In any event, the panel on a common sense reading of the clause is satisfied the wording is clear, not ambiguous, as to intent. "Where no lots have ever been severed in the past...two new lots may be severed for permitted uses" means just that and nothing more or less. Here two lots have already been severed. Accordingly, severance of additional lots is now foreclosed. This straight-forward reading of the provision would appear to conform with the objectives of the Plan. A reading of the provision to the effect that where two lots had previously been severed restrictions on further severance no longer applied seems inimical to the purpose of the Plan and almost perverse. In effect, the owner of a previously unsevered lot would face restrictions on severance in that he could only now have two severances, while the owner of a lot where lots had been severed in the past would face none (except for such limitations on numbers of

severances that might be contained in a local plan). That was the interpretation pressed upon the Board and the Board does not accept it as a valid one.

The Board also notes the final sentence of the clause, "the creation or acquisition of a lot by a public body (e.g. for a road deviation) will not be considered as a previous severance provided this does not result in a remnant severance". The specific relief accorded by this sentence would seem unnecessary if previous severance was an advantage in the sense of moving one beyond this restriction in the Escarpment Plan.

Counsel for Dr. Imrie urged in argument that since the Escarpment Plan takes away rights, it should be accorded a strict interpretation. All planning documents to some extent take away rights and the panel sees this Plan as involving a balancing of rights, public and private. Section 2.2 states that the objective of the General Development Criteria is to permit reasonable enjoyment by owners of lots that can sustain development. Section 50(4)(b) of the *Planning Act* requires us to determine whether the proposed severance is in the public interest. The deliberations of the panel are directed to that determination.

Section 2.4.2 of the Plan provides that new residential lots should be created primarily in designated Urban Areas, Minor Urban Centres and Escarpment Recreation Areas. This proposed new lot would not be in such an area. New lots are permitted in Rural Areas but only subject to policies set out in the Plan. Section 2.4.4 states that ribbon or strip development should be prevented.

The Board has given consideration as to whether the proposal would involve strip or ribbon development. A decision of another panel in considering what might or might not be strip development in a similar situation was of assistance. In that decision, Gordon and Christina Galbraith vs Niagara Escarpment Commission and the Regional Municipality of Halton, (C890957) the panel as then constituted concluded that whether strip development would result was a question of fact in each situation. The panel then went on to say that:

> It seems to the Board that the best way that strip development can be considered or attempted to be defined is that it is linear development of single depth along a given road as opposed to the subdivision approach of development in depth with more than one layer of lots being developed back from the main access road.

This panel agrees that is a reasonable way of looking at the matter and notes the two planning witnesses at this hearing were in disagreement as to whether or not strip development would be

involved. From examination of Exhibit 8, a composite of two assessment maps, there now appear to be more than 20 lots fronting or flanking on the Fourth Line East between the 5th Sideroad and the next intersecting road to the north. Two of these parcels contain 132 and 165 acres, respectively. There are also three parcels, including the subject land, with an area of 50 acres. The remaining lots are less than 40 acres in area with many containing 20 to 25 acres. There are two 5.5 acre parcels directly adjacent to the north of the subject parcel and on the same side of the road. There is also a 14.5 acre parcel on the other side of the road and slightly north of the subject land. Thus, present numbers and configurations of parcels along this part of the Fourth Line, taken together tend towards strip or ribbon development. Were this severance permitted, the 50 acre parcel would become two parcels, one containing 15 and the other 35 acres. There would also be another road access point required along the Fourth Line. When the effect of two such lots along the Fourth Line in proximity to the other land holdings shown on Exhibit 8 is weighed, the conclusion that strip or ribbon development would be encouraged is inescapable. The intent of the Plan as set out in section 2.4.4 is otherwise.

Evidence was given regarding provision for development by plan of subdivision in the Escarpment Rural Area. New Lot Policy 5 speaks specifically of "low density" rural plans of subdivision. The Board is satisfied from the evidence of Mr. Murphy that rather than showing inconsistency in Plan policies or in the recommendations of Commission staff as to interpretation of the Plan, these provisions operate to permit some estate lot development in appropriate areas, subject to meeting review through approval of a plan of subdivision and issuance of development permits. Thus, ad hoc development would be prevented.

The Board must also be concerned as to precedent both in the general and the specific sense. Creation of the severed lot in the proposed location on the Fourth Line would constitute some precedent for other lots of similar configuration in the area. The Board sees the granting of this severance as an encouragement of ad hoc strip development on this part of the Fourth Line. As such, it is not in accord with section 2.4.4 of the Escarpment Plan.

Section 2.4.5 of the Plan, as to size and configuration of new lots, will be addressed through the panel's consideration of the ability of the proposal to satisfy the Caledon Official Plan (section 50(4)(c) of the *Planning Act*).

2. As to section 50(4)(c) and the Town of Caledon Official Plan

It was admitted by Mr. Barber that the proposal could not satisfy the Caledon Official Plan in the matter of the ratio of lot frontage to depth; lot frontage is to be equal to approximately one half the depth. From the evidence, taking the frontage as 91 metres (about 300 feet) and depth as 695 metres (2280 feet), ratio of frontage to depth for the severed lot would be in the range of 1 to 7, rather than 1 to 2.

The Board notes the wording of section 2.5.2.3(e) of the Caledon Plan is peremptory in that the word "shall" is used. Further, in the same regard, section 2.4.5 of the Escarpment Plan also uses the peremptory tense: size and configuration of new lots in the Escarpment Rural Area *shall* be subject to the requirements of local official plans.

Initially, the panel thought of the frontage to depth requirement in the Official Plan as being a policy to encourage a traditional urban lotting arrangement. However, this requirement was realized to be specific to a severance in the Rural area.

Impact of this disproportionate nature of width and length of the proposed severed parcel is clearly illustrated on Exhibit 8 where the two adjacent lots to the north each containing 5.5 acres, with frontages of 100 metres (300 feet) and depths of approximately 243 metres (800 feet) are also shown. The proportions of these two lots more closely approach, although they do not fulfil the policy of the Plan.

A further difficulty is not only with the ratio, but with the actual width and length of the proposed lot; in this setting, production of a residential lot of these dimensions in a rural area does not constitute good planning. The stated intent of the owners is that there will be a continuation, with the addition of another residence, of the family concept of sharing the outdoors as represented by the entire original 100 acre holding which has ensued in the past. Were this shared approach to continue, the physical boundaries between the Percival and Imrie holdings would not likely be of great day to day importance. However, neither the Board or the applicants can ensure this will always be the pattern of land ownership. Among other issues, should further land division on either side of the proposed parcel to be severed occur in the future, protection of privacy for residents of the proposed severed parcel might be difficult to achieve through adequate side yard setbacks, even though physical buffering in the form of trees and shrubs exists.

The panel found Dr. Imrie to be a very credible witness. The situation in which he and his family now find themselves is unfortunate. Past initiatives and conduct of the family in protecting this rural environment in a recognized part of the Escarpment has been exemplary. Based on family history, the relief requested is justified from a personal viewpoint. However, as noted above, the Board must also have regard to other matters set out in the *Planning Act* and in its deliberations has done so. These matters are recognition and protection of the public interest, together with the ability of the proposal to be in general conformity with the Caledon Plan.

This latter matter relates directly to a provision of the Caledon Plan as to ratio of lot frontage and depth. The Board is satisfied that creation of the proposed lot with dimensions as proposed is not in general conformity with the Caledon Official Plan and does not represent good planning.

Having regard to good planning principles in the context of the general intent and purpose of the *Planning Act*, the *Niagara Escarpment Planning and Development Act*, the Niagara Escarpment Plan and the Caledon Official Plan, the panel accordingly finds that:

(1) the proposal would have a negative effect on the public interest as referred to in section 50(4)(b) of the *Planning Act* since,

  (i) it fails to meet the requirement of New Lot Policy 3 of section 1.5 of the Niagara Escarpment Plan as prepared pursuant to the *Niagara Escarpment Planning and Development Act* in that two lots have already been severed,

  (ii) contrary to section 2.4 of the Plan it would encourage rather than prevent ribbon or strip development along this part of the Fourth Line; and,

  (iii) contrary to section 2.4.5 of the Plan it is also unable to satisfy section 2.5.2.3(e) of the Caledon Official Plan (ratio of lot frontage to depth);

(2) the proposal does not generally conform to the Caledon Official Plan as set out in (iii) above, and

(3) the proposal does not satisfactorily address section 50(4)(f) of the *Planning Act* since it would involve creation of a lot with an inappropriate frontage to depth ratio.

For these reasons, the appeal of the Niagara Escarpment Commission is allowed and consent to sever is not granted. The appeal as to the development permit is dismissed.

DATED at **TORONTO** this **14th** day of **FEBRUARY, 1992**

"M.E. Johnson"

M.E. Johnson
Chair

"A.W. Roy"

A.W. Roy
Member

LIST OF EXHIBITS

1. Affidavit of Service - Mrs. Marion Percival and Dr. John David Imrie appeal - August 26, 1991
2. Five Conditions of Approval from Region of Peel table - October 3, 1991
3. Letter from Region of Peel - October 2, 1991 on Conditions of Approval (5)
4. Letter from Credit Valley Conservation Authority - September 27, 1991 on Conditions of Approval
5. Sketch of original 100 acre lot from 1949 and two Severances in 1973
6. Site Plan of Mrs. Percival's 50 acres
7. Excerpts from Assessment Map
8. Exhibit of Assessment Map
9. Resumé of David Barber
10. Exhibit of Map - Schedule "A" Land Use
11. Two extracts from the Niagara Assessment Commission Land Use Plan - Policies
12. Land Use Map of Niagara Escarpment Commission Plan Areas
13. Town of Caledon and Division Application - January 16, 1991
14. Letter to the Niagara Escarpment from the Town of Caledon - September 29, 1989
15. Original Consent Application
16. Development Permit Application - May 10, 1988
17. Letter to the Niagara Escarpment Commission from the Regional Municipality of Peel - August 23, 1989
18. Letter from the Regional Municipality of Peel - August 18, 1989
19. Ministry of Natural Resources Permit Application
20. Long Association Consulting Limited Report for Dr. Imrie

21. Niagara Escarpment Commission Development Permit Letter - November 20, 1991

22. Niagara Escarpment Commission Application of Consent Letter - January 29, 1991

23. Letter to the Ontario Municipal Board from the Regional Municipality of Peel on Land Severance Policy - February 19, 1991

24. Notice of Decision - Land Division Committee - February 15, 1991

25. Curriculum Vitae - Gary Murphy - Niagara Escarpment Commission

26. Draft Plan created by the Niagara Escarpment Commission Staff

27. Niagara Escarpment Commission Conditions (Draft) of Approval

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Ontario. Consolidated Hearings Act, 1981.
CH-91-04
PERCIVAL/IMRIE. DECISION AND REASONS FOR DEC

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